

REMARKS

Claims 1-7, 9, and 10 are all the claims pending in the present application, claims 8 and 11-13 having been deleted as indicated herein. Claims 1-3 and 5-11 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Nelson et al. (U.S. Patent 5,568,641). Claims 1, 2, 4-10 and 12 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Jung Seung (KR 10-2002-0041005), hereinafter referred to as Jung. Claims 1 and 4-6 are rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Mitsui, Hitoshi (JP 2001117780 A), hereinafter referred to as Mitsui. Claims 1 and 4-6 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Matsui et al. (JP 09138769 A), hereinafter referred to as Matsui. Claims 1-3 and 5-11 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Takeo, Kazunori (JP 10105407 A), hereinafter referred to as Takeo. Claims 8 and 12 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Kurihara, Nobumasa (JP 411328040A), hereinafter referred to as Kurihara. Claims 8 and 12 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Huh et al (U.S. Patent 6,584,559). Claims 4-6 and 13 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nelson as applied to claims 1, 8 and 11, and further in view of Kurihara. Claims 3, 5, 6 and 11 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nelson as applied to claims 1 and 8, and further in view of Grote et al. (U.S. Patent 5,432,927). Finally, claims 4-6 and 13 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nelson as applied to claims 1, 8, and 11, and further in view of Huh.

§102(b) Rejections (Nelson) - Claims 1-3 and 5-11

The Examiner rejects claims 1-3 and 5-11 as allegedly being anticipated by Nelson based on the reasons set forth on pages 3-6 of the present Office Action.

With respect to independent claim 1, Applicant submits that Nelson does not teach or suggest at least, “a second memory for storing information transferred through the network,” as recited in claim 1. That is, the Examiner appears to believe that the “new firmware” that is referred to in Nelson satisfies the above-quoted features set forth in claim 1. However, assuming, *arguendo*, Nelson discloses an upgrade involving new firmware, nowhere does Nelson even mention a second memory, constituting a network device, for storing information transferred through the network. To anticipate a claimed invention, an applied reference must teach each and every limitation of the rejected claim. Here, however, Nelson does not teach the above-quoted limitation, therefore the rejection of claim 1 as being anticipated by Nelson is not supportable.

Further, with respect to claim 1, Applicant submits that Nelson does not teach or suggest at least, “a decoder for selecting either the first memory or the second memory, which is used for upgrading the software, according to a control signal received from the controller and a result of monitoring received from the monitoring means, and setting an address,” as recited in claim 1. That is, although Fig. 1a of Nelson does show a box that has the word “decode” in it, nowhere does Nelson disclose a decoder that performs the specific functions set forth above with respect to the claimed decoder.

Yet further with respect to claim 1, nowhere does Nelson disclose or suggest at least, “A network device...comprising... monitoring means for monitoring at least one failure of the

network device while the software is being upgraded,” as recited in claim 1. That is, nowhere does Nelson mention a network device, and certainly does not mention a network device comprising the claimed monitoring means.

Therefore, at least based on the foregoing, Applicant submits that independent claim 1 is patentably distinguishable over Nelson.

With respect to dependent claims 2, 3, 5, and 6, Applicant submits that these claims are patentable at least by virtue of their dependency from independent claim 1.

Further, with respect to claim 2, as argued above with respect to claim 1, Nelson does not disclose at least the claimed second memory and what it stores, and therefore, Nelson does not teach copying, “the information stored in the second memory to the original area of the first memory,” as recited in claim 2.

With respect to independent claim 7, Applicant submits that this claim is patentable at least for reasons similar to the reasons set forth above with respect to claim 1. That is, we would argue that Nelson does not teach at least, “a third memory for storing information transferred through the network,” and “a controller for performing control to ... store a copy of an old version of the software in an empty area of the second memory before the old version of the software stored in the first memory is upgraded to the information stored in the third memory,” as recited in claim 7.¹

With respect to claim 9, Applicant amends this claim, as indicated herein, and submits that amended claim 9 is patentable at least for reasons similar to those set forth above with

¹ The “third memory” in claim 7 corresponds to the claimed “secondary memory” in claim 1.

respect to independent claim 1. That is, the claimed second memory as set forth in amended claim 9 corresponds to the second memory that is recited in independent claim 1, and Nelson does not teach the features of claim 9 involving the claimed second memory.

With respect to dependent claim 10, nowhere does Nelson even mention when, in its process, a failure is checked. Therefore, Nelson clearly does not teach at least, “wherein the at least one failure is a failure in the network device which is checked during the erasing and storing steps,” as recited in claim 10.

§102(e) Rejections (Jung) - Claims 1, 2, 4-10 and 12

With respect to the rejections over Jung, Applicant elects to perfect priority under 35 U.S.C. § 119, and request removal of Jung as a prior art reference. Jung has a publication date of May 31, 2002, which is after the filing date of KR 2001-38804 (June 30, 2001), from which the present application claims benefit of priority. To perfect priority, Applicant submits herewith an English-language translation of KR 2001-38804, a copy of which was submitted on January 17, 2002, and a statement that the translation of KR 2001-38804 is accurate.

§102(a) Rejections (Mitsui) - Claims 1 and 4-6

Claims 1 and 4-6 are rejected over Mitsui for the reasons set forth on pages 6-7 of the present Office Action. Applicant traverses these rejections at least based on the following reasons.

With respect to independent claim 1, the Examiner relies on the English language Abstract of Mitsui as allegedly satisfying each and every limitation set forth in independent claim 1. However, the Abstract of Mitsui clearly does not satisfy each and every limitation of claim 1, as, for example, there is no mention in the Abstract of Mitsui of “a second memory for

storing information transfer through the network” as recited in claim 1. Therefore, at least based on the foregoing, Applicant submits that the Examiner has not established that each and every limitation of claim 1 is satisfied by Mitsui.

Applicant submits that dependent claims 4-6 are patentable at least by virtue of their dependency from independent claim 1. Further, with respect to dependent claims 4-6, the Examiner cites the Abstract of Mitsui to support the rejections of these claims also, however, nowhere does the cited portion of Mitsui even mention a component corresponding to the claimed “monitoring means”, which is recited in each of claims 4 and 5, nor the specific limitations set forth in claim 6. The Examiner obviously utilizes impermissible hindsight reasoning in concluding that the Abstract of Mitsui supports the rejections of claims 4-6.

§102(b) Rejections (Matsui) - Claims 1 and 4-6

The Examiner yet again relies on the Abstract of a Japanese (Matsui) reference to support the rejections of claims 1 and 4-6. Applicant submits that claims 1 and 4-6 are patentable at least for reasons similar to those set forth above with respect to the rejection of claim 1 over Mitsui. That is, nowhere does the Abstract of Matsui teach at least “a second memory for storing information transferred through the network,” as recited in claim 1, and the Examiner does not establish that Matsui teaches each and every limitation set forth in each of dependent claims 4-6.

Therefore, at least based on the foregoing, Applicant submits that claims 1 and 4-6 are patentably distinguishable over Matsui.

§102(b) Rejections (Takeo) - Claims 1-3 and 5-11

Yet again, the Examiner relies on the Abstract of a Japanese reference, Takeo, to support the rejections of the claims.

With respect to independent claim 1, the Examiner alleges, *inter alia*:

Regarding claim 1, Takeo disclosed (in abstract, lines 1-16) a network device (central processing part) capable of upgrading software, comprising monitoring means (fault monitoring part), a first memory (back-up memory and part of operation memory), a second memory (part of operation memory), a controller (autonomous program fault restoring system), and a decoder (storage part).

In response, Applicant submits that Takeo does not teach at least, “a second memory for storing information transferred through the network,” as recited in claim 1. There is no mention in the abstract of Takeo of storing any information that has been transferred through a network.

Applicant submits that dependent claims 2, 3, 5, and 6 are patentable at least by virtue of their dependency from independent claim 1.

With respect to independent claim 7, Applicant submits that Takeo does not teach at least, “a third memory for storing information transferred through the network,” as recited in claim 7, and as similarly argued above with respect to independent claim 1. The “third memory”, as set forth in claim 7, corresponds to the claimed “second memory” in claim 1.

With respect to independent claim 9, Applicant submits that Takeo does not teach at least, “upgrading the software through the network and checking whether at least one failure occurs during the upgrade,” as recited in amended independent claim 9. That is, there is no mention of any such upgrade of software through a network in the Abstract of Takeo. Therefore, the Examiner has not established that each and every limitation of independent claim 9 is satisfied by Takeo.

We would argue that dependent claim 10 is patentable at least by virtue of its dependency from independent claim 9. Further, with respect to claims 9 and 10, the Examiner obviously uses

impermissible hindsight reasoning in concluding that the Abstract of Takeo satisfies the respective features set forth in each of claims 9 and 10, as there is no mention of a network device in Takeo's Abstract.

§102(b) Rejections (Kurihara) - Claims 8 and 12

Claims 8 and 12 are canceled, as indicated herein, without prejudice or disclaimer.

§102(e) Rejections (Huh) - Claims 8 and 12

Claims 8 and 12 are canceled, as indicated herein, without prejudice or disclaimer.

§103(a) Rejections (Nelson/Kurihara) - Claims 4-6 and 13

The Examiner rejects claims 4-6 and 13 over Nelson and Kurihara for the reasons set forth on pages 11-12 of the present Office Action.

Applicant submits that dependent claims 4-6 are patentable at least by virtue of their dependency from independent claim 1. Kurihara does not make up for the deficiencies of Nelson. That is, neither Nelson nor Kurihara, either alone or in combination, teaches or suggests at least the limitations of claim 1 discussed above with respect to the anticipation rejection of claim 1.

Claim 13 is canceled as indicated herein.

§103(a) Rejections (Nelson/Grote) - Claims 3, 5, 6 and 11

Claims 3, 5, 6, and 11 are rejected over the combination of Nelson and Grote for the reasons set forth on page 12 of the present Office Action. Applicant traverses these rejections at least based on the following reasons.

Applicant submits that dependent claims 3, 5, and 6 are patentable at least by virtue of their respective dependencies from independent claim 1. Grote does not make up for the

deficiencies of Nelson. That is, neither Nelson nor Grote, either alone or in combination, teaches or suggests at least the limitations of claim 1 discussed above with respect to the anticipation rejection of claim 1.

Further, with respect to claim 6, assuming, *arguendo*, Grote discloses that “the decoder operates that the network device can be restarted (execution of bootstrap loader sequence) based on the old version of the software (auxiliary flash sets),” as the Examiner alleges, nowhere does Grote teach or suggest the specific features of claim 6. For example, Grote does not teach or suggest that, “after the old version of the software is copied to the empty area of the first memory, the decoder operates so that the network device can be restarted based on the old version of the software,” as recited in claim 6. Therefore, at least based on the foregoing, Applicant submits that dependent claim 6 is patentably distinguishable over Nelson and Grote, either alone or in combination.

Claim 11 is canceled as indicated herein.

§103(a) Rejections -(Nelson/Huh) - Claims 4-6 and 13

First, Applicant submits that dependent claims 4-6 are patentable at least by virtue of their respective dependencies from independent claim 1. Huh does not make up for the deficiencies of Nelson. That is, neither Nelson nor Kurihara, either alone or in combination, teaches or suggests at least the limitations of claim 1 discussed above with respect to the anticipation rejection of claim 1.

Further, with respect to claim 6, Applicant submits that this claim is patentable at least for reasons similar to those set forth above with respect to the rejection of claim 6 over Nelson

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and Grote. That is, the secondary reference, Huh, does not teach or suggest the specific features of claim 6 referred to above with respect to Nelson and Grote.

Claim 13 is canceled as indicated herein.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

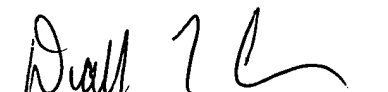
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